

Dear Senators TIPPETS, Patrick, Schmidt, and
Representatives HARTGEN, Anderson, King:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Commerce:

IDAPA 28.04.01 - Rules Pertaining To The Rules Governing the Idaho Reimbursement Incentive Act
(New Chapter) - Proposed Rule (Docket No. 28-0401-1402).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/20/2014. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/18/2014.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Commerce & Human Resources Committee

FROM: Division Manager - Mike Nugent

DATE: September 30, 2014

SUBJECT: Department of Commerce

IDAPA 28.04.01 - Rules Pertaining To The Rules Governing the Idaho Reimbursement Incentive Act (New Chapter) - Proposed Rule (Docket No. 28-0401-1402)

In 2014, the Legislature enacted House Bill No. 546, as Amended in the Senate, known as the "Idaho Reimbursement Incentive Act" which provided for reimbursement to businesses for job creation from certain tax dollars. HB 546aaS provided an economic development tool that provides a tax credit up to thirty percent for up to fifteen years on new corporate income tax, sales tax, and payroll taxes paid as a result of a new qualifying project. These credits and exemptions would be available to both existing and new companies seeking expansion in the state. The tax credit percentage and project term would be negotiated based upon the quality of jobs created, regional economic impact and return on investment for Idaho. All incentives are to be approved by the Idaho Economic Advisory Council and will be governed by detailed agreements between the state and incented companies. Information regarding all the corresponding tax credits and the economic impact will be reported annually to the Governor and Idaho State Legislature, and the commitments will be publicly available on the Idaho Department of Commerce website.

These proposed rules take the place of temporary rules that were promulgated in July. The proposed rules were not the product of negotiated rulemaking but the Notice of Rulemaking indicates that the Department sought the input of parties throughout the state with specific information, knowledge, expertise and technical information about economic development and business expansion. The Department indicated that feedback was gathered from the Office of the Attorney General, the State Tax Commission, local economic development professionals, site selectors, corporate decision makers and corporate legal counsels.

It appears that the proposed rules have been promulgated within the scope of statutory authority granted to the Department of Commerce by the passage of HB 546aaS.

cc: Department of Commerce
Jeffery Sayer

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Statehouse, P.O. Box 83720
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IDAPA 28.04.01 - IDAHO DEPARTMENT OF COMMERCE

28.04.01 - RULES GOVERNING THE IDAHO REIMBURSEMENT INCENTIVE ACT

DOCKET NO. 28-0401-1402 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4702, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

On July 1, 2014, the Idaho Department of Commerce adopted the temporary rules of the Idaho Reimbursement Incentive Act. The adoption of temporary rules was necessary to fulfill the requirements of the new Idaho Reimbursement Incentive Act as enacted in House Bill H0546a and to commence the possible award of a Tax Reimbursement Incentive (TRI) credit to businesses seeking expansion within the state of Idaho. While operating under temporary rules, the Department further refined and established the necessary applications, templates, workflow processes, incentive agreements and other supporting documentation necessary to execute the Idaho Reimbursement Incentive Act. During the development of processes, the Department sought the input of key stakeholders including other agencies, economic development professionals, and companies through solicited feedback and meetings.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This rule will incur no cost to the general fund to initiate. The program is designed to reimburse taxes actually paid and will perpetually generate the revenues needed to fund the incentive. Incentives will be no more than 30% of taxes paid leaving a minimum of 70% of all new state tax revenue in the treasury. Incentives will last a maximum of 15 years.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. However, the Department sought the input of a variety of parties throughout the state with specific information, knowledge, expertise and technical information about economic development and business expansion. Feedback was gathered from the Office of the Attorney General, Idaho State Tax Commission, local economic development professionals, site selectors, corporate decision makers, and corporate legal counsels.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Megan Ronk, Chief Operating Officer at 208-287-3153.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 26th Day of August, 2014

Megan Ronk
Chief Operating Officer
Department of Commerce
Tel (208) 287-3153 / Fax (208) 334-2631

PO Box 83720
700 W State Street
Boise, ID 83720-0093

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 28-0401-1402

IDAPA 28
TITLE 04
CHAPTER 01

28.04.01 - RULES GOVERNING THE IDAHO REIMBURSEMENT INCENTIVE ACT

000. LEGAL AUTHORITY.

These rules are promulgated under the legal authority of Section 67-4744, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 28.04.01, "Rules Governing the Idaho Reimbursement Incentive Act." ()

02. Scope. These rules implement House Bill No. 546, as amended in the Senate, and enacted by the Second Regular Session of the Sixty-second Legislature and signed into law on April 3, 2014. These rules amend Chapter 47, Title 67, Idaho Code, by the addition of new sections 67-4737 through 67-4744, Idaho Code. The seven (7) new sections provide rulemaking authority to the Director of the Department of Commerce, a short title and legislative intent, an application and pre-application process, formation of incentive agreements with the business entity, reimbursement to the business entity through an earned tax credit, annual reporting procedure and requirement of an annual report to the Legislature by the Director of the Department of Commerce. ()

002. WRITTEN INTERPRETATIONS.

The Department may have written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. These documents are available for public inspection at the Department's office. ()

003. ADMINISTRATIVE APPEALS.

The award of a credit under the Tax Reimbursement Incentive Act is made at the recommendation of the Director of the Department of Commerce and approval of the Economic Advisory Council (Council). In light of the negotiated nature of awarding the Tax Reimbursement Incentive (TRI), there is no administrative appeal under these rules. Nothing in this section shall prohibit an aggrieved applicant from seeking judicial review as provided in Chapter 52, Title 67, Idaho Code. ()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The mailing address of the Department for information regarding the Tax Reimbursement Incentive Act is: 700 West State Street, PO Box 83720, Boise, ID 83702-0093; the telephone number is (208) 334-2470; and the facsimile number is (208) 334-2631. Documents may be filed at the state office during regular business hours of 8am to 5pm, Monday through Friday, excluding holidays. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act (Title 9, Chapter 3, Idaho Code). ()

007. -- 099. (RESERVED)

100. DEFINITIONS AND ABBREVIATIONS.

Unless defined below, all words shall have the meaning ascribed in Chapter 47, Title 67, Sections 67-4737 through 67-4744, Idaho Code. The statutory definitions can be found here: <http://legislature.idaho.gov/idstat/Title67/T67CH47SECT67-4738.htm>. ()

01. Incentive Agreement. A reimbursement contract between the Department and the business entity which details any instruction provided by the Council in addition to the requirements detailed in Chapter 47, Title 67, Section 4740, Idaho Code. Also referred to as an Agreement. ()

02. Pre-Application. A form, paper or electronic, that is completed by the business entity or on behalf of the business entity by an authorized economic development or local government representative when details about the Meaningful Project are not fully known. A pre-application necessitates that an application is completed by the business entity or its authorized representative at a later time, and prior to award of a tax credit. ()

03. Tax Reimbursement Incentive Act (TRI). A performance based tax reimbursement mechanism available to existing Idaho businesses and new businesses creating jobs in Idaho. Also known as the Idaho Reimbursement Incentive Act. ()

101. -- 129. (RESERVED)

130. PROGRAM INTENT.

The TRI is designed to accelerate the growth of new business opportunities, encourage the creation of high-paying jobs, and diversify the state's economy. The Tax Reimbursement Incentive is a performance-based economic development tool that provides a refundable tax credit up to thirty percent (30%) for up to fifteen (15) years on new business entity income tax, sales tax, and payroll taxes paid as a result of meaningful project. The TRI will perpetually generate the revenues needed to fund the incentive. ()

01. Available Credit. This credit is available to both existing and new companies seeking expansion in the state. The tax credit percentage and project term are negotiated based upon the quantity and quality of jobs created, state/regional economic impact and return on investment for Idaho, among others. The credit authorized shall be the lowest approved percentage and term that will incentivize creation of new jobs and New State Revenue. ()

02. Evaluation and Recommendation. Incentives will be evaluated and recommended to the Council by the Director, with final approval by the Council. The TRI will be governed by detailed incentive agreements between the Department and business entity. ()

131. -- 149. (RESERVED)

150. ELIGIBILITY.

01. Eligible Recipients. Recipients of the TRI are limited to existing business entities located in Idaho seeking to expand their companies within the state of Idaho, and business entities, new to Idaho, seeking to relocate to, or expand in, the state of Idaho. ()

02. Eligible Projects. An eligible project is an expansion of an existing business located in Idaho or the creation of new business operations in Idaho that generate the minimum required new jobs based on rural or urban location. ()

151. JOB CREATION CRITERIA.

01. Rural Community. The minimum new jobs required for a rural community is not less than twenty (20) over the term of the project. ()

02. Urban Community. The minimum new jobs required for an urban community is not less than fifty (50) over the term of the project. ()

03. New Jobs. New jobs must exceed the business entities' maximum number of full time jobs in Idaho during the twelve (12) months immediately preceding the date of the application. ()

04. Job Shift. A job that shifts from one (1) location within the state of Idaho to another location within the state of Idaho is not considered a new job. ()

05. New Jobs Wages. New jobs wages must equal or exceed the average annual county wage in the county where the jobs are located. The Department will annually publish the average county wage based on the most recent, non-preliminary information, obtained from the Idaho Department of Labor. ()

152. APPLICATION PROCESS.

01. Inquiry. The business entity, or its authorized representative, may engage an authorized representative from the Department to complete an initial screening process. The screening process will assist the business entity in determining to proceed with a pre-application or application. Information necessary during screening includes general details about the Project, the number of full-time jobs, the number of new jobs, the minimum new jobs, the rural or urban area under consideration, the industry, the community contribution, as well as any other information requested to determine eligibility. The business entity, in consultation with the Department's representative, shall make a determination to proceed with a pre-application or a full application depending on the project timeline, known project details or other factors associated with the project. ()

02. Pre-Application. After the business entity's determination to proceed with a pre-application, the business entity, or its authorized representative, will be provided with a pre-application. A pre-application may be completed by the business entity or an authorized representative of the business entity, such as an economic development or local government representative. A pre-application shall detail the following: ()

a. A complete description of the proposed project and the estimated economic benefit that will accrue to the state as a result of the project; ()

b. A statement of dependency explaining whether the project will occur or how it will be altered if the application is denied by the council; ()

c. A letter from the city or county, or both, expressing a commitment to supply community contribution; ()

d. Detailed description of the proposed capital investment; ()

e. Detailed description of jobs to be created, an approximation of the number of such jobs to be created and the projected wages to be paid for such jobs; and ()

f. Detailed description of the estimated new state tax revenues by tax to be generated by the project. ()

03. Pre-Application Estimate Letter. Upon review and acceptance of a pre-application, the Director may issue an estimate letter to the business entity or its authorized representative, or both, which describes the estimated amount of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. This letter is not a binding commitment but an estimate based on the initial information supplied in the pre-application. ()

04. Application. After the business entity's determination to proceed with an application, the business entity will be given access to the application, which shall include, but not be limited to, the following information: ()

a. A complete description of the proposed project and the estimated economic benefit that will accrue to the state as a result of the project; ()

b. An affidavit of criticality explaining that without the TRI incentive, the business entity would be forced to alter its project or not choose Idaho; ()

c. A letter from the city or county, or both, describing their commitment to supply community contribution, a specific description of the contribution, and the amount of the contribution; ()

d. Business entities currently doing business in Idaho will supply a letter from the Idaho State Tax commission confirming that the business entity is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission; ()

e. An estimate of Idaho goods and services to be consumed or purchased by the business entity during the term; ()

f. Known or expected detriments to the environment or existing industries in the state; ()

g. An anticipated project inception date and proposed schedule of progress; ()

h. Any proposed performance requirements and measurements that must be met prior to issuance of the tax credit; ()

i. A description of any proposed capital investment; ()

j. A detailed schedule and description of the projected jobs to be created, the projected wages to be paid for those jobs, and the anticipated hiring schedule for those jobs; and ()

k. The estimated new state tax revenues to be generated by the project. ()

05. Application Recommendation Letter. Upon review of an application, the Director may issue a letter that details the Director's anticipated recommendation to the Council. The letter may include the percentage of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. All application recommendation letters shall contain a "subject to Economic Advisory Council approval" contingency clause. ()

06. Technical Review - Pre-Application. The Director and Department staff will complete a technical review of each pre-application. Upon satisfaction that all pre-application requirements are met, the Director may issue an estimate letter. ()

07. Technical Review - Application. The Director of the Department and Department staff will complete a technical review and economic impact analysis of each application. The technical review will consider many economic factors and external information sources such as, but not limited to, the region, industry, financial health and history of the business entity, as well as the quality, quantity and economic impact of new jobs and new state revenue. Upon satisfaction that all application requirements are met, the Director may submit a recommendation for award to the Council. ()

08. Economic Advisory Council. The Council shall review the application and the Director recommendations. Following review the council shall have the following three (3) options as follows: ()

a. Request additional information or action from the Director in order to obtain necessary information to approve or reject the application; or ()

b. Approve the application and instruct the Director to enter into an incentive agreement with the business entity; or ()

c. Reject the application. ()

d. An approval or rejection from the council shall not be considered a contested case pursuant to Chapter 52, Title 67, Idaho Code, provided, however, that nothing in this section shall prohibit an aggrieved applicant from seeking judicial review as provided in Chapter 52, Title 67, Idaho Code. ()

09. Pre-Application Schedule. The pre-application is open year round. Review of pre-applications are subject to the meeting schedule of Department staff. ()

10. Application Schedule. The application is open year round. Review of applications is subject to the meeting schedule of Department Staff and the Council. The Council will meet no less than quarterly and has the ability to meet more often at the request of the Director. ()

153. -- 159. (RESERVED)

160. CONFLICT OF INTEREST.

Conflict of Interest is defined by Idaho's Office of the Attorney General as any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or member of the person's household, or a business with which the person or a member of the person's household is associated. In the event Department staff, including the Director has a conflict of interest regarding an application, the conflict shall be fully disclosed to the Director and the Council, and that person shall abstain from decision making or evaluation of the application. In the event a Council member has a conflict of interest regarding an application, the Council member shall fully disclose such conflict to the Director and the Council, and that Council member shall abstain from discussing or voting on the application. ()

161. -- 169. (RESERVED)

170. AGREEMENTS.

01. Incentive Agreement. At the direction of the Council, and in accordance with the criteria established by these rules, the Director shall enter into an incentive agreement with the business entity. ()

02. Agreement Terms Defined. The incentive agreement shall contain any terms as approved by the Council, or deemed necessary by the state Deputy Attorney General, as well as define the following: ()

a. Maximum term that shall not exceed fifteen (15) years; ()

b. Projected new state revenues to be generated during the term; ()

c. Method and recordkeeping requirements to determine projected new state revenue to be generated; ()

d. The approved tax credit percentage applied to new state revenue each year the business entity is entitled to receive the reimbursement during the term of the meaningful project; ()

e. The projected new jobs; ()

f. The terms and conditions of any and all performance requirements and measurements that must be met prior to the issuance of a tax credit authorization; ()

g. The agreed upon and necessary proof of compliance required prior to tax credit issuance. Proof of compliance provided by the business entity must be adequate to demonstrate to the director that all requirements and measurements have been met for the business entity to receive the tax credit; ()

h. The consequences of default by the business entity; ()

i. The period to be used to determine the taxes paid at the date of application; ()

j. Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641, Idaho Code, or is required to obtain a separate seller's permit pursuant to Chapter 36, Title 63, Idaho Code. ()

k. The federal employer identification or social security number for each individual or entity stated as the business entity in the incentive agreement; and ()

l. Identification of the individual or entity that is or will be claiming the refundable credit. ()

171. -- 179. (RESERVED)

180. TAX CREDIT AUTHORIZATION.

01. Claiming Tax Credit. No business entity may claim a tax credit unless the business entity has a tax credit authorization issued by the Department. A business entity may claim a tax credit on its tax return, in the amount listed on the tax credit authorization for the year listed on the tax credit authorization. ()

02. Duplicate Copy. The Department shall provide a duplicate copy of any tax credit authorization to the Tax Commission. ()

181. -- 189. (RESERVED)

190. ANNUAL REPORTING BY APPLICANT.

Required Annual reporting shall be outlined in the incentive agreement and will include, but not be limited to, the following: ()

01. New State Revenues. Supporting documentation of the new state revenues from the business entity's new project that were paid during the preceding calendar year. ()

02. New Jobs Created. Supporting documentation of the new jobs that were created during the preceding tax year and the corresponding payroll information associated with the new jobs. ()

03. Known or Expected Detriments. Known or expected detriments to the environment or existing industries in the state. ()

04. Authorization Document. A document that expressly directs and authorizes the Tax Commission and Department of Labor to allow the Department access to the business entity's returns, filings and other information that may be necessary to verify or otherwise confirm the declared new state revenues, the new jobs and the associated payroll information. ()

05. Tax Commission Letter. A letter from the Idaho State Tax Commission confirming that the business entity is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission. ()

06. Other Entitled to Rebate. Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641 or 63-4408, Idaho Code, or is required to obtain a separate seller's permit pursuant to Chapter 36, Title 63, Idaho Code. ()

07. Supporting Documentation. Supporting documentation that the business entity has satisfied the measurements and requirements outlined in the incentive agreement. ()

191. ANNUAL REPORTING BY DEPARTMENT.

The Department shall create an annual written report for the Governor and the Legislature describing the following: ()

01. Successes. The Department's success under this act in attracting new jobs; ()

02. Estimated Tax Credit Commitments. The estimated amount of tax credit commitments made by the Department and the period of time over which tax credits will be paid; ()

03. Economic Impact to State. The economic impact to the state related to generating new state revenue and providing tax credits under this act; ()

04. Estimated Costs and Benefits. The estimated costs and economic benefits of the tax credit commitments that the Department made; and ()

05. Actual Costs and Benefits. The actual costs and economic benefits of the tax credit commitments the Department made. ()

06. Submittal of Report. The report shall be submitted to the Office of the Governor and the appropriate legislative committee chairmen in a timely manner following the close of the state's fiscal year. ()

192. -- 199. (RESERVED)

200. AUDIT.

On or before November 1, 2015, and every year thereafter, the Department shall arrange for an independent third party audit pursuant to Chapter 47, Title 67, Idaho Code. The Department shall consider any audit recommendations provided during the audit and implement changes as necessary of a result of those recommendations. ()

201. -- 209. (RESERVED)

210. CONTINUATION OF TAX CREDIT.

During the term of the project for each business entity, the Department shall review the business entity's annual report. Provided the business entity provides a reasonable justification for authorizing or continuing a tax credit, the Department shall determine the amount of the tax credit to be granted, issue a tax credit authorization to the business entity, and provide a duplicate copy of the tax credit authorization to the Tax Commission. The amount of the tax credit to be continued shall be in accordance with the credit percentages specified in the incentive agreement. The TRI shall not be extended beyond the term and length specified in the incentive agreement. ()

211. TERMINATION OR SUSPENSION OF TAX CREDIT.

During the term of the project for each business entity, the Department shall review the business entity's annual report and if the information provided is inadequate or inaccurate to provide a reasonable justification for authorizing or continuing a tax credit, the Department shall: ()

01. Denial of Tax Credit. Deny the tax credit for that tax year; or ()

02. Termination of Agreement. Terminate the incentive agreement for failure to meet the performance standards established in accordance with the terms outlined in the incentive agreement; or ()

03. Request for Additional Documentation. Request the business entity to submit additional documentation. ()

212. -- 219. (RESERVED)

220. SUSPENSION OF IDAHO REIMBURSEMENT INCENTIVE ACT.

The Director shall suspend the issuance of all new incentive agreements with business entities upon the occurrence of the following conditions: ()

01. Temporary Spending Reduction. The governor orders a temporary reduction of general fund spending authority, pursuant to Section 67-3512A, Idaho Code; and ()

02. Suspension of New Agreements. The governor issues an executive order directing the Department

to suspend the issuance of new incentive agreements during the tax year in which the temporary reduction of general fund spending authority has been ordered and the executive order issued. ()

03. Existing Approved Agreements. In the case of suspension all agreements that have been approved by the Council prior to the governor issuing an executive order, as provided in Subsections 026.01 and 026.02 of these rules, shall remain in full force and effect and shall not be modified or impaired as a result of the executive order. ()

04. Support of Existing Agreements. During the period of time that new incentive agreements have been suspended, the Director shall maintain the necessary services required to support all existing agreements and comply with all required reporting and review responsibilities. ()

05. Removal of Suspension. The governor may remove the suspension issued by executive order. ()

221. -- 999. (RESERVED)